IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 678 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AAISHABEN UMAR GAJJAN - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/07/2007

ORAL JUDGMENT

1. Rule. Shri R.C.Kodekar, learned APP waives service of rule on behalf of the respondent – State.

2. Present petition has been filed under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Criminal Procedure Code for quashing and setting aside the impugned orders dated 16.12.2006 passed by the learned Additional Sessions Judge, Fast Track Court No.1, Khambhaliya in Criminal Revision Application No.119 of 2006 as well as the order of the learned JMFC, Khambhaliya dated 6.11.2006 passed below Khambhaliya Police Station Diary Entry No.3 of 2006 as well as Criminal Misc. Application No.206 of 2006 thereby directing that the colour tins confiscated by the police be released in favour of the petitioner on giving appropriate security. In the alternative, the learned counsel appearing for the petitioner has prayed for an appropriate order directing the police authorities to sell the colour tins seized by the police and thereby to deposit the amount released on selling the said colour tins with the trial Court so as to avoid any further deterioration of the colour tins.

3. A Station Diary Entry No. 3 of 2006 came to be registered in the Khambhaliya Police Station under section 41(1)(d) of the Criminal Procedure Code and section 102 of the Indian Penal Code against the respondent Nos.2 to 4 and around 150 tins of colour imported from out of India were sized by the police from the above mentioned persons and the same are lying with the police as Mudamal. The petitioner claiming to be the owner of the said colour tins made an application on 3.10.2006 under section 451 of the Criminal Procedure Code for release of the Mudamal colour tins in her favour by way of Criminal Misc. Application No.206 of 2006. The learned JMFC, Khambhaliya dismissed the said application of the petitioner by order dated 6.11.2006. Being aggrieved with the order passed by the learned JMFC, Khambhaliya dated 6.11.2006 in dismissing the Criminal Misc. Application No.206 of 2006, the petitioner preferred Criminal Revision Application No.119 of 2006 before the learned Sessions Court and the

learned Additional Sessions Judge, Fast Track Court No.1, Khambhaliaya by its judgment and order dated 16.12.2006 dismissed the said Criminal Revision Application confirming the order passed by the learned JMFC, Khambhaliya. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioner has preferred present petition under Articles 226 and 227 of the Constitution of India r.w. section 482 of the Criminal Procedure Code.

4. Shri Nirav Thakkar, learned advocate appearing for the petitioner has submitted that the petitioner is dealing in the business of purchasing custom clearns material from Salaya port and selling it in open market and the colour tins confiscated by the police are part of the business dealing of the petitioner. It is submitted that the colour tins confiscated by the police are duly custom cleared and the receipt of payment of customs duty is already produced before the Courts below. It is submitted that it is an admitted position that

the colour tins were recovered from the accused who are arrested and in fact they have stated on oath that they do not object to release of the colour tins in favour of the petitioner and therefore, both the Courts below have materially erred in not releasing the Mudamal colour tins in favour of the petitioner on giving sufficient security. It is submitted that if the colour tins are allowed to lie in the police station indefinitely they are likely to lose its value thereby causing irreparable loss to the petitioner. It is submitted that the Courts below have materially erred in directing that the police should dispose of the colour tins in open market by holding auction and deposit the amount realized in the Court. In the alternative, Shri Nirav Thakkar, learned advocate for the petitioner has requested that the petitioner be permitted to sell the colour tins in presence of the police subject to reasonable conditions thereby ensuring maximum price and security of return of the amount from the petitioner at the conclusion of the trial.

Therefore, it is requested to pass an appropriate order either releasing the colour tins in favour of the petitioner or permitting the petitioner to sell the colour tins in presence of the police.

5. Shri R.C.Kodekar, learned APP has submitted that alternative prayer of the petitioner can be said to be justified so as to ensure maximum price and security of return of the amount. It is submitted by him that the petitioner can be permitted to sell the colour tins in question under the supervision and/or presence of the Deputy Superintendent of Police, Jamnagar.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. As respondent Nos.2 to 4 from whom the colour tins were recovered and/or seized they have already submitted before the learned trial Court that they have no objections, if the colour tins are given to the petitioner, they are not

required to be heard. It is not in dispute that the colour tins 150 in numbers are lying with the Police Station which have been seized as Mudamal. The learned Revisional Court has specifically observed that the petitioner has not produced any cogent evidence with regard to the ownership of the aforesaid colour tins and therefore, it cannot be said that the orders passed by both the Courts below refusing to release the Mudamal colour tins in favour of the petitioner are in any way illegal. At the same time, it is also required to be considered that if the said colour tins are permitted to be kept with the police authorities, the conditions of the colour tins would be deteriorated and the value will be decreased and therefore, it will be in the interest of the parties that the said colour tins are sold. As such, the learned Revisional Court has already passed an order directing that the police authority should dispose of the colour tins in open market by holding auction and deposit the amount realized in the Court, however, it is apprehended by the

petitioner that if the police authority is permitted to sell the colour tins in open market, it might not fetch maximum price and therefore, the petitioner may be permitted to sell said colour tins on suitable conditions. Under the circumstances, the orders passed by both the Courts below require to be modified to the aforesaid extent by permitting the petitioner to sell the colour tins under the supervision and/or in presence of the Deputy Superintendent of Police, Jamnagar and the amount so realized by selling the aforesaid colour tins be deposited with the learned trial Court and the learned trial Court shall invest the said amount in the Fixed Deposit in the name of Nazir so that ultimately, whosoever succeeds, may get the said amount with interest.

8. For the reasons stated above, petition succeeds in part. The judgment and order passed by the learned Additional Sessions Judge, Fast Track Court No.1, Khambhaliya dated 16.12.2006 passed in Criminal Revision Application No.119 of 2006

is hereby modified to the extent that the petitioner is permitted to sell Mudamal colour tins under the supervision and/or in presence of the Deputy Superintendent of Police, Jamnagar so as to fetch maximum price and the amount so realized by selling the said Mudamal colour tins be deposited with the learned JMFC, Khambhaliya and the learned JMFC, Khambhaliya to invest the said amount in a Fixed Deposit in the name of Nazir of the said Court initially for a period of 3 years with cumulative interest. The possession of the Mudamal colour tins be handed over to the purchaser only on deposit of the entire sale consideration and the whole amount be accepted either by demand draft or by cash. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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